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Paper No.
MAILED

SEP 27 2010

OFFICE OF PETITIONS

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|------------------------------|---|---------------------------|
| In re Patent No. 7,630,817 | : | DECISION ON REQUEST |
| Lock et al. | : | FOR |
| Issue Date: December 8, 2009 | : | RECONSIDERATION OF |
| Application No. 10/519,369 | : | PATENT TERM ADJUSTMENT |
| Filed: September 8, 2005 | : | and |
| Atty Docket No. 10191/4075 | : | NOTICE OF INTENT TO ISSUE |
| | : | CERTIFICATE OF CORRECTION |

This is a decision on the petition filed on May 21, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by four hundred and twenty-six (426) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by four hundred and five (405) days is **GRANTED to the extent indicated herein.**

On December 8, 2009, Application No. 10/519,369 matured into U.S. Patent No. 7,630,817, with a patent term adjustment of 416 days. On February 11, 2010, Patentee filed a Request for Recalculation of Patent Term Adjustment in view of Wyeth. On April 21, 2010, the Office mailed a "DECISION ON REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF WYETH AND NOTICE OF INTENT TO ISSUE CERTIFICATE OF CORRECTION," indicating that the patent term adjustment had been determined to be 406 days.

The Office notes that the decision of April 21, 2010 was issued in error as it accorded Patentee one more day of patent term

adjustment than was warranted. The present decision supersedes the decision mailed on April 21, 2010.

Patentee has indicated that this patent is not subject to a terminal disclaimer.¹

The Office agrees that there was zero examination delay, 281 days of applicant delay, and the 11 days of the over three year period consumed by appellate review, beginning on October 27, 2008 and ending on November 6, 2008, are not included in the B delay.

It is noted that the 371 acceptance letter (M903) mailed on January 10, 2006 indicates that the priority date is July 11, 2002. The 30-month anniversary of this date is January 11, 2005. Therefore, the national stage commencement date is January 11, 2005, and not December 21, 2004, as set forth in paragraph 4(i) on the second page of this petition.

As such, the patent term adjustment is increased by 405 (0 days of examination delay plus 686² "B-delay" (697 after-three-years minus the aforementioned excluded 11 days minus 0 overlap) minus 281 days of Applicant delay) days, not 426 days.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or Patentee an opportunity to be heard. Accordingly, Patentee is given one (1) month or thirty (30) days, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Any response to this decision should indicate in a prominent manner that the attorney handling this matter is Paul Shanowski, and may be submitted by mail,³ hand-delivery,⁴ or facsimile.⁵ Registered users of EFS-Web may alternatively submit a response to this decision via EFS-Web.⁶

¹ Petition, page 2, paragraph 5.

² Patentee calculates the B-delay to comprise 707 (718 - the excluded period of 11 days).

³ Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

⁴ Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.

⁵ (571) 273-8300 - please note this is a central facsimile number.

⁶ <https://spportal.uspto.gov/authenticate/authenticateuserlocalepf.html>

The Office acknowledges submission of the \$200.00 fee set forth in 37 C.F.R. § 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by four hundred and five (405) days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3225.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,630,817 B2

DATED : December 8, 2009

DRAFT

INVENTOR(S) : Lock et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 406 days

Delete the phrase "by 406 days" and insert – by 405 days--